THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.4772 of 1995

Dt. 06-03-2006

Between:

Master Kalyan rep. By his father A.Ravindernath

..Petitioner

and

1.The Chairman, A.P.S.E.B., Vidyut Saudha, Somajiguda

Hyderabad and others.

..Respondents

THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.4772 of 1995 & WPMP No.29610 of 1998

Common Order:

Writ petition filed by the petitioner through his father claiming compensation or solatium in a quantum of Rs.8 lakhs against the Andhra Pradesh State Electricity Board for the electrification caused to the petitioner due to negligence of the persons incharge of the electric installation and the equipment near the Mamatha Apartments, Safilguda, Hyderabad was disposed of by this Court on 22-01-1997 stating that the remedy in the petition involves the investigation to the claim of compensation for the alleged negligence of the respondents due to the incident of

electrocution. The question whether it was an incident or an accident with or without the negligence of the particular persons involved in the case warrants an enquiry. Therefore, the concerned District Judge in whose jurisdiction the place of incident situates shall hold an enquiry into the claim of the petitioner after giving opportunity to both sides to file their statement and counter statement and all the material produced or desired to be produced by any means and after hearing both sides within four months from the date of receipt of a copy of the order. If one or the other party is aggrieved by such a decision, they shall be entitled to bring it to the notice of this Court along with a copy of the decision of the said Court to pass final orders in the matter and also awarded interim compensation of Rs.20,000/-, which is not liable to be refunded in the event if it is held that the petitioner is not entitled to any compensation. Pursuant to the orders passed by this Court parties approached the Principal District & Sessions Judge, Ranga Reddy District and the petition filed by the petitioner was numbered as O.P.No.139 of 1997. After giving due opportunity to both the parties, who lead evidence, the learned District Judge dismissed the petition holding that the accident is not due to negligence of the respondents and they are not liable to pay any compensation to the petitioner. In view of the finding recorded by the lower court petitioner filed WPMP.No.29610 of 1998 for setting aside the order passed by the Principal District & Sessions Judge, Ranga Reddy District in O.P.No.139 of 1997 and award compensation as claimed in the writ petition.

The Supreme Court in ***CHAIRMAN, GRID CORPN. OF ORISSA LTD. (GRIDCO) v. SUKAMANI DAS*** held that for exercising the jurisdiction under Article 226 actions in tort and negligence are first required to be established by the petitioner—claimants. Mere fact that claimants had suffered loss (electric transmission wires belonging to the appellant-defendants having snapped and deceased coming in contract and dying) is not sufficient for awarding compensation. The Court is required to examine whether loss is caused by negligence of the defendants by giving due opportunity to prove that proper care and precautions were taken in maintaining transmission line. The Supreme Court further held in para-6 as under:

> "…. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the

> deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that 'admittedly/prima facie amounted to negligence on the part of the appellants'. The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to appellant I had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contract with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorized intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided property on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High court should have directed the writ petitioners to approach the civil court as it was done in OJC No.5229 of 1995."

Following the same the Supreme Court in ***SDO, GRID CORPN. OF ORISSA LTD. v. TIMUDU ORAM*** held that High Court was not justified in exercising the power under Article 226 without properly appreciating the nature of its jurisdiction and accordingly set aside the order of the High Court.

In view of the same, petitioner if aggrieved by the report of the District Judge, the proper remedy for him is to carry the matter in appeal and assail the correctness of the same before the appellate forum.

W.P.M.P.No.29610 of 1998 is accordingly dismissed.

In view of dismissal of WPMP nothing survives in the writ petition and it is accordingly closed. No costs.

_____ A.GOPAL REDDY, J.

06-03-2006

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